

Understanding the UUD 1945 in the Reality of Indonesia Public Law

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Abstract

A constitution not only consist of the basic rule or grand norm of a country, but also of the rules of the game for any socio-political activities serving as a way of life of a nation to build the country. Principally, a state constitution is used to limit the power of the government and to assure the people's political rights. In this case, the government power (executive) should be in a good balance with the parliament power that represents the people (legislative) and other state powers. Therefore, it is necessary to understand the values of the constitution completely and holistically, so that the people may reconstruct and analyze the whole content of the constitution. But it is still inadequate to take some indications of the sources of values. In fact, the practice of analyzing the content of the UUD 1945 turns out being mostly influenced by not merely the sound of the written text but also by its implied meaning.

Keywords : UUD 1945 (Indonesia Constitution), the reality of Indonesia Public Law, the content analysis of the UUD 1945.

1. Introduction

The term *Constitution* is from French, meaning to *form*. Dealing with state, constitution means the establishment or construction of a state. Meanwhile the Constitution is the translation from the Dutch *Gronwet*, where in its development, some experts clearly distinguish but some others make the same between basic law and constitution. Some experts in law differentiate between basic law and constitution. Herman Heller divides constitution into three:¹

Constitution reflects a political life in the society as a reality.

1. Constitution is a unit of rules of life in the society.
2. Constitution is written in a manuscript as the highest constitution in a country.
3. Constitution is written in a document as the highest law in a state

From the three divisions, it is clear that constitution may be approached from various open perspectives. F. Lassalle divides constitution into two:²

1. Constitution is a synthesis of real factors of in the society
2. Constitution is a document containing the state building and government principles.

The two divisions sign that constitution possesses the same meaning with previous opinions politically, sociologically and juridically

Experts in law who make constitution and basic law the same are as follows:

1. Prof. Sri. Soemantri in his dissertation³ states that, like other countries, Indonesia also possesses Basic Law or Constitution.
2. James Bryce : a constitution as from political society organized through and by law, that is to say one in which law has established permanent institutions with recognized functions and defined rights.
3. C.F Strong : constitution is a collection of principles according to which the power of the government, the right of the governed, and the relation between the two are adjusted.⁴

Apart from opinions that differentiate or similarize between constitution and basic law, according to

Jimly, actually it constitution has the following functions:

1. Determining and constraining functions of powers of state organs
2. Fungsi pengatur hubungan kekuasaan antar negara
3. Regulating function of power between state organs and citizens
4. Giving function or sources of legitimation to state power of the implementation of state power
5. Dealing or switching function of authorities from original power sources to state organs.
6. Symbolic function as uniter
7. Symbolic function as a reference of identity or nation majesty.

¹ Moh Kusnardy dan Hamily Ibrahim, Pengantar Hukum Tata Negara Indonesia, Pusat Studi HTN FH UI, Jakarta, 1988, p.65

² Abu daud Busroh dan Abu Bakar Busroh, Asas-asas Hukum Tata Negara, Ghalia Indonesia, 1991, p. 73

³ Has been published in the form of a book "Prosedur dan Sistem Perubahan Konstitusi, Alumni Bandung p. 1

⁴ C.F Strong, Modern Political Constitutions, an introduction to the comparative study of their history and existing form, The English Language Book Society and Sidwick & Jackson Limited, London, 1966, p 11

8. Symbolic function as a centre for ceremony
9. Function as a medium for controlling people either in narrower wide sense – social, economic
10. Function as a medium of engineering and renewing people either in narrow or wide meaning¹

From the descriptions above, it is shown that the meaning of constitution not only contain the stipulation of basic law but also the socio-political life of a nation as the state compass. Texts in the constitution known as UUD (the basic law) are the results of formulation of what happens in the people's life. The existence of a constitution in the state principally is to limit the government power and to assure the people's political rights, the government power balanced by the parliament power and legal institutions.² It is this idea that later is named constitutionalism in the public law³.

Constitution is very important in a state. With laws that are made in the state must be derived from the basic state containing philosophy, groundslag, state ideology or *staatsidee*⁴. In Session PPKI August 18, 1945 Sukarno as chairman insists that what was decided today it is the Constitution tentative, so that later can be discussed again to be changed if the Indonesian people already living in the atmosphere in a peaceful state. Here are excerpts from a speech Sukarno at that time:

"... This is a tentative Constitution, the Constitution quickly. Then we make the Constitution a more perfect and complete. Please remember really by all of us so that today can be done with this Constitution".⁵

Focusing on the Indonesia Constitution known as the UUD 1945 (*Undang-undang Dasar 1945*) in the context of constitution classification, the UUD 1945 in the context of the classification (K.C.Wheare, 1966) is a written, flexible, even rigid constitution; written since it is documented in a document, flexible, it merely contains 37 articles that may follow the time development, and rigid, it is difficult to change. In this paper, the terms constitution and UUD are used in accordance with the needed contexts.

In this paper, the writer tries to understand the UUD 1945 in the reality of the practice of operating the state, especially its government coordination. In understanding a constitution or UUD, Soetandio Wignjoseboto⁶ states that "to understand a constitution completely and holistically, one must be willing to deconstruct and examine the whole content of the black box, and not merely to catch its indicative sparks in the surface".

Indonesia gained its freedom in 1945, where its founding fathers have designed the UUD 1945 as the basic law of the Republic of Indonesia, although its establishment was full of fierce debates, especially between Prof. Soepomo, Hatta, M. Yamin dan Soekarno⁷.

The UUD 1945 was legalized on August 18, 1945, one day after the Proclamation of the Republic of Indonesia, intended to free the people and the nation of Indonesia from the suffering under the Dutch or Japan administration. Its vision is very noble as stated in the preamble of the UUD as follows:

... protect all Indonesian people and its whole territory and to make a public prosperity, make the nation smart and to participate in the world order on the basis of freedom, eternal peacefulness, social justice, so that the freedom of the Indonesian nation is established in a Constitution, formed in an order of the Republic of Indonesia under the people sovereignty based on the One Supreme God, Just and Civilized Humanity, Indonesia Unity, democracy lead by wisdom in parley or representation, and also the realization of social justice for all Indonesian people) (Paragraph IV of the 1945 Preamble).

This mission is nicely heard, read, pronounced and even if being felt by Indonesian people. But, this noble mission has not been realized yet up to now, since education as a medium to make the people life smart is felt expensive, and the prosperity is still far from reach, and the like.

As the basic law in the organization of the State of Indonesia, the UUD 1945 has been implemented in two periods, first from August 18, 1945 to December 27, 1949, second from July 5, 1959 up to now. There was a period where the organization of the government of the Republic of Indonesia was based on the Constitution of United States of the Republic of Indonesia namely from December 27, 1949 to August 17, 1950 and on the 1950 Temporary Constitution from August 17, 1950 to July 5, 1959.

¹ Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006, pp 33-34

² Moh Mahfud MD, *Demokrasi dan Konstitusi di Indonesia*, Liberty, Yogyakarta, 1993, p.21

³ Miriam Budiardjo, *Dasar-dasar Ilmu Politik*, Gramedia, Jakarta, 1982

⁴ Darji Darmodihardjo, *Orientasi Singkat Pancasila*, dalam *Laboratorium Pancasila IKIP Malang*, Santiaji Pancasila, Usaha Nasional Surabaya, 1981 hal 19

⁵ Moh Yamin, *Naskah Persiapan Undang-Undang Dasar 1945*, Penerbit Siguntang, Jakarta, 1971, hal 410

⁶ Soetandio Wignjoseboto, *Hukum: Paradigma, Metode dan Dinamika Permasalahannya*, Huma, Jakarta, 2002, hal 403-404

⁷ Debate on the basic idea of state on the basis of individual theory, class theory and integralistic theory. Prof. Soepomo tends to desire the State Indonesia based on the integralistic theory. In this theory, State assures the interest of the whole people as a unit. The State does not take sides to the strongest or the biggest class, at least it does not consider an individual interest as a centre, but assures the safety of the people life as inseparable unit.

2. Problem of the research

In this study, the focus is on how to understand the problems of state order based on the UUD 1945 as the base for organizing the government and in relation to the practice of the state order in Indonesia based on the *trias politica* theory.

3. Data and Mothode

This study is a doctrinal study. Done with a review of literature associated with the situation in the Indonesian government from independence until the time of reformation. The analysis is conducted qualitatively to the substance of the 1945 Constitution and how your understanding of the 1945 state officials.

The data obtained are the primary legal materials, namely legislation are still valid and relevant to the 1945 Constitution Medium secondary legal materials is the opinion of experts, research and papers by constitutional experts.

4. Result and Discussion

4.1. Problems of State Order Based on the UUD 1945

In general, UUD or Constitution is established since the people want to have a new start in the government, and also their belief that Constitution is considered as an instrument that may be used to control the government by the limitations as stated in the constitution.

This is also the case with the *UUD 1945*, where it is as the state base in its organization in line with the objective of the Country wanting to make the people life prosperous and smart, then the UUD 1945 manifested itself into the basis of Constitution State, Law State, where the power of the rulers is limited by the stipulations stated in the *UUD 1945*. But, when the time passes, the practice of organizing the government based on the UUD 1945 faces various problems.

a. Agustus 18, 1945 –December 27, 1949 Period

During the early period of independence, the state of Indonesia had not yet possessed any complete infra-politics, state institutions that should exist according to the stipulation in the *UUD 1945*, based on the change rule of the article IV on the power of state institutions the president organizes, “Before the MPR (People’s Consultative Council), DPR (House of Representative), DPA (Supreme Advisory Board) are established based on the Constitution, all their powers are performed by the President with the help of a National Committee”. Even the laws enforced still are still “borrowed” from the colonial ones, the Dutch, through the door of change rule article II: “All existing state bodies and regulations are still valid, during which no new ones are made according to the Constitution”.

The preliminary problem in organizing the State is precisely the denial of the establishment of the *UUD 1945* intending the limitation of powers, since the UUD 1945 which should adhered the concept of constitutionalism even opened chances for centralizing powers by giving the president powers of all state functions namely executive and , legislative functions and also advices to the president.

The situation of centralizing the functions was actually temporary, but it was very dangerous for the State, since the basic law that should give some assurance to the citizens to be stayed away from any authoritarian governments which were mostly opposed during the XVIII century was given an opportunity to reappear in the newly independent country. Luckily, the announcement of the Vice President DPR was made, since the announcement changed the status of the *Komite Nasional Indonesia Pusat* (KNIP) (Central Indonesian National Committee) to become DPRS (Provisional House of representative) possessing legislative power and also some of the authority of the MPR to determine the GBHN (Broad Outline of the Nations’ Direction). Even, the working agency of the KNIP asked that the presidential government to be changed into parliamentary one.¹ So that the president and his ministers should be responsible for the legislative agency.

Legal decision in the form of the the vice president’s declaration is a very brave, revolutionary and also progressive one. Since at that time, the “legal world” was under the hand of positivististic concept. Bravery to change direction from presidential into parliamentary form should be understood to prevent the state from any authoritarian government, a government that is not intended by Indonesian people at that time and also even at present.

So the the state organizers at that time actually had a visionary view in interpreting laws, and it was the characteristic of a progressive interpretation of any laws for human interest,² where at that time Indonesian people accepted the change of government direction from presidential into parliamentary form, since it is in line with their needs namely a government with limited powers, so that there is a check and balance.

¹ Mahfud MD, *Amandemen Konstitusi Menuju Reformasi Tata Negara*, UII Press, Yogyakarta, 1999, p 34

² Satjipto Rahardjo, *Penafsiran Hukum yang progresif*, a paper for Doctoral students of Law, Undip, Semarang, 2005

b. Juli 5, 1959 to March 11, 1966 Period

During the period of December 27, 1949 to July 5, 1959, the coordination of the state of Indonesia was based on the RIS (Federal Republic of Indonesia) Constitution and the 1950 *UUDS* (Provisional Constitution), since in this period, the body with the duty of making constitution, namely Constituent Body) was in a critical condition. During the determining moment, since president Soekarno was considered to fail in determining the Constitution, the president decree at July 5, 1959 was announced with the following content:

1. Dispersing the Constituent
2. Putting the *UUD 1945* into effect and withdrawing the *1959 UUDS*; and
3. Constructing MPRS and DPAS.

From the time on, the *UUD 1945* has been prevailed as the state base from the legal matter instead of the content of the president decree. It is the president decree which is interesting to examine. The decree is a revolutionary legal product without any legal base. Theoretically, it is very difficult to explain the position of the decree. From the positivistic side, this law was in opposition to the *UUDS 1950* at that time, where the president should obey the *UUDS 1950*. From positivistic view, even the president had broken the *UUDS 1950*. If there was a change of *UUD*, it was the prime minister, instead of the president, who had a right to do, since the position of the president was merely as the head of state. President Soekarno really wanted to be the head of state and also a strong head of government¹, and he also tried to map some corrective efforts the Constituent body made in making a New *UUD*.

From the perspective of the progressive law, the president decree on July 5 1959 has no characteristics for the complete interest of Indonesian people, it is merely one of legal products that broke the rules and it may give some benefits for certain parties, especially president Soekarno. Because of the legal product, president Soekarno power, as head of state and also of government, was very great.

Even it is proper to state that the president decree is a repressive law, since its legal meaning is declining, where law is just for the interest of some people. Because after the decree, the Indonesian people's desire to make Indonesia a democratic country could be reached since it was authoritatively administrated. Repressive legal products flourished at that time, for instance 1960 law no 14, allowing the president to be involved in the judicative power, the 1960 President Decision no.6 on the Dispersion of the House of Representative resulting from the 1955 general election, and the 196 President Decision no.7 on the establishment of DPR *Gotong Royong*. It is clear that the legal products are unconstitutional either normatively or substantively, rule breaking, but repressive. Even the summit of repressive legal product is the MPRS's Decision no. III/MPRS/1963 that designated Ir Soekarno as a life time president.

c. March 11 1966 to 1998 Period

A similar vein is also prevailed under the new order administration, where the *UUD 1945* was heavily worshipped. Any ideas to change was considered as a big sin and one should be willing to accept *gebugs* (blows) from the ruler. Satjipto Rahardjo² notes the president Soeharto's speech a moment after the end of the democratic order government: "any serious deviation of the *UUD 1945* is the centralized power of the head of state. Principles and foundations of constitution I practice is absolutism. The highest power is not on the MPR(S), but in the hand of the great revolution ruler. The president does not obey the MPR(S) but it is the MPR(S) which is conquered by the president". Concerning with the president Soeharto's statement that rapped the previous implementation of the Indonesia government, then Satjipto Rahardjo³ states: "but as what happened during the new order government under Soeharto's administration, Mr Soeharto himself practiced such an administration he rapped, which is a legitimation of his way to the chair of presidency".

Coordination of the state of Indonesia at that time made use of the weakness of the *BUD '945* for the interest of the president. Legal products in the form of political laws, for instance, the law on general election, composition of DPR, DPRD (local House of Representative), and MPR on political parties in order to devote and reinforce the president's power. Even, during the new order administration, the political format was no democratic, legal products were always conservative with instrumentalistic, positivistic function.⁴

The ways the new order administration made use of weaknesses in the *UUD 1945* were systematic so that Mr Soeharto was able to reign this country for 32 years. Mr Soeharto left his reign unconstitutionally according to the *BUD 1945*, but it was the students who made a constitution to have Mr Soeharto to leave his chair.⁵

¹ Nasution dalam Bahtiar Effendy, Reformasi Konstitusi sebagai Prasyarat Demokratisasi Pengalaman Indonesia, dalam Jurnal Analisis, CSIS, in the year of XXIX/2000 No 4

² Satjipto Rahardjo, Tidak menjadi Tawanan Undang-undang, in Karlos Kopong Medan dan Frana J Rengka *Sisi sisi lain Hukum di Indonesia*, Kompas, Jakarta, 2003, p. 117

³ Satjipto Rahardjo, op.cit hal 118

⁴ Mahfud MD, op.cit, p 21

⁵ Indah Sri Utari, Konstitusi yang Tercetak dijalanan, in Wajah Hukum di Era Reformasi, Citra Aditya Bakti, Bandung, 200,

The second experience of the led-democratic order and the new order regimes shows that the UUD 1945 merely raises such an authoritarian government, where at the end of a reign of a regime – an injury is felt. This condition boosts the amandement of the BUD 1945.

4.2. Reasons for the Amanemend of the UUD 1945

The collapse of the new order in 1998 brought about a great wave of reformation. One of the agenda of the reformation is to make an amandement of the UUD 1945. Some thoughts or reasons underlying the ammndement are offered by some experts in law, among others: Satjipto Rahardjo in *Kompas*, May 8 1998 in his article *Keleluasaan Reformasi Hukum* states that any deviation of the BUD 1945 is not quality, namely unconstitutional normative, but unconstitutional substantive. The deviation is not only normative but also substantive in nature in managing this state from what should be done.

Salman Lutha, in *Kompas June 30 1998, Mengungkap Alasan Untuk Amandemen UUD 1945*, states, substantively the UUD 1945 possesses some weaknesses, namely giving an opportunity for corruption, tentative, static, and obsolete.

From the perspective of legal politics, Moh Mahfud MD states that the UUD 1945 constructs an extra heavy political system, where power is centralized on the president. It gives too much authority to the legislative board without any clear limits. Moreover, it contains multi-interpretative articles and it is too plain, giving benefits to the spirit of state rulers.

Meanwhile Moekti Fadjjar, in his introduction to a book with the title of *Konstitusi Baru melalui Komisi Institusi Independent (2002)* explains the reasons to ammendmentof the UUD1945: historically, the UUD 1945 was made by our founding fathers as provisional one. Philosophically, the UUD 1945 mixes opposing ideas, for instance, between people sovereignty and of integralistic concepts, law state and power state concepts. Theoretically, from the constitution theory, the existence of constitution in a state naturally is a power which is not to arbitrary, but it turns out that the UUD 1945 gives a more emphasis on the integration. juridically, written constitution contains a clause of change, as stated in article 37. Politically, in practice, any changes often deviate from he original text. Principally, the internal situation of Indonesian people at that time was that they has a strong will to amend the UUD 1945.

4.3 Problems of the UUD 1945 After Ammendment

As an agendum of reformation, amendment was made from 1999-2000. After the amendment, some problems arose. The results of the amendment maybe said to have become two groups, first among reformists, who wanted to change even to replace the UUD 1945, and conservatists, who praised the UUD 1945, considered that the change of the UUD 1945 was not proper. The latter is represented by *Gerakan Nurani Parlemen* (Parliament Inner Movement) and *Forum Kajian Ilmiah Konstitusi* (Scientific Study of Constitution Forum) and *Persatuan Purnawirawan Angkatan Bersenjata Republic Indonesia* (Ex Army of the Republic of Indonesia Organization).¹ Reformists consider that ammendment the MPR made resulted in a repair by patching ammendment, meaning that principally they had not been able to accept the results of the four -times ammendment.

It turns out that those who wanted Indonesia to return to the “original” UUD 1945 continued their movement on July 5 2006, when they commemorated the 47 president decree on July 5 1959 and they asked Indonesia to return to the original UUD 194². Due to strong wills of various circles to return to the original UUD 1945, Adnan Buyung Nasution responded them that those wanting to prevail the original UUD 1945 are those anti-democracy³. dekrit

The existence of various cycles wanting this country to return to the original UUD 1945 should be paid attention. From the approach to the history of state order, original UUD 1945 is a great work. It should be realized that original UUD 1945 is the great and onumental work to build and to construct Indonesia State. This great work should be respected by all generation of this country.

But the way to respect the great work does not mean placing original UUD 1945 as a life long constitution. If it is the case, it is to compel our wishesto the generation and also not not give the any chance to develop themselves in line with the demand of the period by creating new constitutions.

Those wanting to prevail the original UUD 1945 certainly should also respects the composers of the UUD 1945; that they had a very bright view coming from their sincerity that the UUD 1945 is still provisional and imperfect. This view is their confession and also their great wisdom since they still give spaces and opportunities for the next generations to make it perfect.

p. 69

¹ Saldi Isra, Bahaya Kembali ke UUD 1945, Koran tempo, April 16 2002

² Commemoration Program of the 47th of the President Decrit July 5, 1959, attended by figures such as : expresident Abdurrahman Wahid, Soetardjo Soerjogoeritno, Jendral (purn) Tyasno Sudarto, the program was made in Tugu Proklamasi Jakarta

³ Kompas, 10 Juli 2006

Based on the background of the composers of the UUD 1945 that UUD 1945 is a provisional and imperfect constitution and historically the content of the UUD 1945 may be made use of by the rules to defend their power. The facts also show that during the led-democracy era and the new order era, great and uncontrollable powers resulting in authoritarian government were obtained by the rulers.

Those who want to defend the UUD 1945 as the state constitution may argue who is wrong, the BUD or the rulers. Anyhow, the UUD 1945 gives chances to result in absolute government.

The nation and all elements of Indonesian people must return their memory to the origin of the establishment of the UUD 1945. Remember that one of architects of the UUD 1945 is Prof. Soepomo who wanted the Indonesia state is integralistic state, placing the head of the state as the head of family. The view confuses concept of politics and of antro-biological power and what is done by State should not be put in doubt but obeyed. In this atmosphere it is not proper, since State abolishes any control for herself.

Integral spirit obsessed the content of the UUD 1945 giving high authority to the president, and authoritarian signals actually had been manifested in the change rule article IV stating that "the president may do his function as the DPR, DPA and MPR, and this is really a very great combination of powers.

Ir. Soekarno, who were taking part in composing the UUD 1945 had forgotten his own recognition that the UUD 1945 was merely a provisional constitution. Even he was sunk into the enjoyment of power without any limit as facilitated by the UUD 1945. Does not it mean that Ir. Soekarno had not respected the UUD 1945, since he had benefited the weakness of the UUD 1945 to reinforce his position as the president?

Respecting the UUD 1945 should be done by fully maintaining its unity, even the points, commas, articles and the like. Respecting the UUD 1945 is not merely willing to implement it purely and consequently, but should also be willing to make some changes of it. Since actually any changes of the UUD 1945 are made to make it more perfect as had been welded by the founding fathers of this country. Of course, by putting off the spirit of integralistic state, balancing between the powers existing in democratic state institutions, the power that respects human rights of its citizens with all its justice and human nature.

If the UUD 1945 is like inheritance, for example a house, the receiver of the inheritance who does not sell or mortgage it means that she/he respects his/her ancestors, but if the roof may leak, the timber may be rotten, the rooms are still small, where all of them may endanger the occupants because the house may be collapsed or may not be used, some betterments may be made.

This nation should confess that in the results of the amendment of the UUD 1945 from 1999-2002, there is still weakness. To close the weakness is under the responsibility of the whole nation. Of course a mechanism of public law should be used to improve it. It is not proper if we should return to the original UUD 1945 since it is clear that it had resulted in authoritarian governments. Should we return to our laking house with rotten woods, and too small rooms? If so, it means that we have made it so sacred and made ourselves tortured since we are afraid that the house would be collapsed.

Any idea to return to the original UUD 1945 equals to making it sacred. It is in opposition to the highest law namely natural law: anything has limit, has time, there is time to use or to neglect it, there is time to be heard, and there is time to hear.

4.4 Reality of the Indonesia Public Law in the Perspective of Trias Politica

It is better to remember that at the end of the XVIII century, nations in the European regions were under the hands of cruel government regimes. The rules had strong power and very wide private rights without any compartment like those at present. As a result, the people suffered, since there was no assurance of descent life for the citizens

The existence of the cruel regimes was reacted by great thinkers at that time. John Locke (1632-1704) opposed the model of arbitrary government through his idea that the existence of a state is intended to assure the implementation of human rights possessed by human beings from their births; right to live, right to get freedom and right to have something. The human rights will be protected and assured, if the government is not implemented in an authoritarian way. To realize it, he proposes that the power in the state be divided into three namely legislative, making and determining regulations, federative, arranging relationship with other countries and Which is then the three groups of power by Immanuel Kant is called Trias Politica.

In line with the thought, Montesquieu (1688-1755) who was very apprehensive with the implementation of the French government at that time which was very absolute proposed that the power in that country be divided into three pillars of power, namely legislative, executive and judicative powers. This idea was promoted in order that there was not centralization of powers namely on the king at that time. He exemplified the good government of England since in the country three pillars of power were adopted. In *Kompas September 12 1999, with the title of Trias Politika Itu Kabar Bohong* the reason why England adopted the separate divisions in its government is merely a lie, since at that time up to now England has not implemented the division of powers as suggested by Montesquieu.

As the time passed, *Trias Politica* is acknowledged as three pillars of power, but in practice it is just

United States, ex- English colony, that gained its freedom on July 4 1776, which may be said to organize the government which approaches the concept intended in the Trias Politica.

At present the age of Trias Politica is three centuries. Various countries have organized their state powers by dividing powers as intended by Montesquieu, but the relationship one and another is still far from what is firstly thought, namely a clear division of powers among legislative, executive and judicative ones.

A heavy struggle to make Trias Politica applied is made by the people in countries suffering from powers centralized on one institution, the state of which its government was operated in an authoritarian fashion. So that a dream where human rights will be assured, and authoritarian governments are avoided will come true if Trias Politica is implemented.

In its further development, Trias Politica has become a very popular theories up to this century. There are many countries that divide their powers into three pillars, but in practice, the division is not as intended by the conceptor of Trias Politica. Therefore, there appear the terms pure and not pure Trias Politicas, and material and formal Trias Politicas.

Related to the division of power and on the trias politica, Wade and Phillip in Ismail Suny¹ state that three questions should be asked for whether in a constitution there should be a power division concerning with the relationship between legislative and executive bodies:

- Are the same persons or bodies a part of the powers of legislative and executive bodies?
- Does the legislative body control the executive body or on the way around?
- Does the executive body perform the executive function and the executive body perform the legislative function?

The answers to the three questions may determine whether the constitution follows trias politica or not.

Indonesia is one of hundreds of countries that once sorrowfully lived under the power of other countries. However, in the UUD 1945 it is shown that the state of Indonesia does not follow *Trias Politica* as intended by Montesquieu, since there is a dual function of the executive body, it also performs the legislative function as state in article 5 of the UUD 1945 : "President has a right to propose drafts of a law." Even before amended, president hold a power to construct laws.

Actually, the existence of the authoritarian government in Indonesia is more or less influenced by the fact that the UUD 1945 did not follow the trias politica theory. As a result, when the two regimes of the led-democratic order (1959-1966) and the New Order (1966-1998) adopted authoritarian fashion, exhortation to divide powers may be made in Indonesia. But a moment after the UUD 1945 was amended (1999-2002), it turns out that Trias Politica has not been used as a compass in coordinating state power.

It should be understood that actually Trias Politica is indeed difficult to apply in coordinating state power. Because if Trias Politica is applied as Montesquieu intended, the state is precisely difficult to control its institutions. This is due to the fact that its concept is merely the power division, so its check and balance is difficult to do. If the application of Trias Politica in the United States of America is considered as the best, a question arises: who controls the Legislative and Judicative bodies? Since the president as the coordinators of the executive body may be dismissed by the legislative body through a mechanism of impeachment, then who impeaches the Judicative and Legislative bodies?

After three centuries Trias Politica enjoys its golden period as a reference in coordinating state powers, it is high time to review it. If at first Trias Politica was intended to avoid absolute governments, it turns out that due to the power division into the three pillars, authoritarian governments may still happen through a domination of one of the pillars of powers over the others. For example in Indonesia, the executive domination of the New Order lasted for 32 years, in the era of Abdurrahman Wahid's administration (1999-2001) the legislative body dominated the government, so that Abdurrahman Wahid had to leave the palace on May 20, 2001. From the descriptions above, it is a necessity to correct Trias Politica.

Conceptually, the power division in the Trias Politica may not enable the power centralization, but domination of one of the pillars probably happens, it is this situation that has not yet been thought by Montesquieu. Therefore, it is necessary to think about one more body to complement the three pillars. The fourth pillar is a body supervising the performance of individual or institutional bodies and relationships among them. This supervision is to prevent any domination of one pillar over the others, and so it is proposed that the name becomes *Catur Politika* (Four Politika).

The fourth body may facilitate a mechanism of dismissing members of power bodies either executive, legislative and judicative bodies, including legal products or their policies. The three existing pillars in a cyclic fashion are limiting one another but it cannot dismiss one and another, because the executive body is dismissed by the legislative body, the legislative body is dismissed by the judicative body, and the judicative body is dismissed by the executive body. All the mechanisms may be performed after results from supervising the four bodies are accepted and the one supervising the bodies is the Supervisory Body of State Institutions. So that in

¹ Ismail Suny, *Pembagian Kekuasaan Negara*, Aksara Baru, Jakarta, 1982, pp 4-9

the future *Trias Politica* will become *Catur Politica* (Four *Politica*).

5. Conclusion

The *UUD 1945* was hastily and concisely designed since its inception, and the implementation of it has been given to the spirit of independence and good intention of the doers, but in practice this raises many problems. The problems once arose deal with the practice of authoritarian government, anti-democracy, and making use of weaknesses of the *UUD 1945* for the interest of certain groups.

The problem dealing with the *UUD 1945* is that there are many experts in law in Indonesia who still adopt a positivistic view of the texts of the *UUD 1945* so that they view that this state should be operated according to the stipulations stated in the *UUD 1945*. If not, it means that a deviation happens.

It should be understood that the content of the *UUD 1945* is multi-interpretation, the interpretation adopted by the state operators is regressive one, interpretation without any vision, interpretation that gives an emphasis on the subject of interpreters for their own interest. This may result in a misleading interpretation.

There are few experts in law who have been trying to make legal interpretations progressively of the texts contained in the *UUD 1945*. This results in blind spirit to change or to defend the *UUD 1945* or even to replace it with new constitution. Unluckily, it is impressed that the amendment of the *UUD 1945* is a business of a certain political elite. It is merely them who have rights and obligations to make some changes to the *UUD 1945*. They have made some amendments without involving the people with good capability in understanding law, especially constitution. The result is that the texts produced take sides on certain groups or parties.

It is a necessity to try to interpret texts contained in the *UUD 1945* progressively, so it may produce legal meaning that later may take sides on human interest. Texts in the *UUD 1945* should be substantively given meanings, so that uncoordinating the state, an emphasis is to operate this state as intended by the laws in the *UUD 1945*. Therefore, the existence of the *UUD 1945* is for the interest of human beings completely, instead of Indonesian people for the *UUD 1945* where there is a struggle to defend the *UUD 1945* using a slogan "*pejah gesang nderek UUD 1945*" (life or death, stay with the *UUD 1945*).

In the practice of operating the state, there should one body functioning to control the existing state bodies, so that no domination of one body over the others or internal conflicts individually or institutionally. Therefore, *Trias Politica* which was born in XVII century should be replaced with *Catur Politica*.

In future needs in a holistic understanding of the 1945 Constitution, in order to guide good governance, in the heading and achieve their future goals of the nation, which is fair and prosperous society.

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